

NOT FOR PUBLICATION

CLOSED

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

AQUA-GULF TRANSPORT, INC.,

Plaintiff,

v.

TWIN COUNTY TRANSPORTATION
AND PRO TRANSPORTATION
SERVICES,

Defendants.

Civil Action No.: 06-1952 (JLL)

ORDER

This Court had referred Plaintiff's motion [CM/ECF Docket Entry #4] to remand the instant action to the Superior Court of New Jersey to the Honorable Claire C. Cecchi, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1)(B). Having reviewed *de novo* the Report and Recommendation of November 14, 2006, and having considered Defendant Pro Transportation Services' objection thereto, as well as Plaintiff's response to said objection, this Court concludes that the action should be remanded to the Superior Court of New Jersey. The November 14, 2006 Report and Recommendation of the United States Magistrate Judge is adopted and incorporated as the Opinion of this Court.¹

¹ The Court notes that Defendant Pro Transportation attempted to submit new evidence in its objection to Magistrate Judge Cecchi's November 14, 2006 Report and Recommendation, but fails to provide any explanation, whatsoever, as to why this evidence had been previously unavailable. Magistrate Judge Cecchi had specifically requested that the parties submit supplemental submissions on the very issue of whether Defendant Twin County Transportation had been served with the Summons and Complaint, and had consented to the removal of the

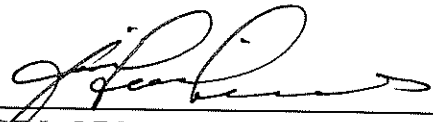
IT IS on this 8th day of December, 2006,

ORDERED that the Report and Recommendation of Magistrate Judge Cecchi, dated November 14, 2006, recommending that this civil action be remanded, is hereby ADOPTED as the findings of fact and conclusions of law of this Court; and it is further

ORDERED that Civil Action No. 06-1952 is hereby remanded to the Superior Court of New Jersey.

This case is **CLOSED**.

DATED: December 8, 2006



JOSE L. LINARES,
UNITED STATES DISTRICT JUDGE

instant action. As such, the Court finds that Defendant Pro Transportation had more than ample opportunity in which to engage in proper due diligence prior to Magistrate Judge Cecchi's ruling on the issue. Furthermore, even if Defendant Pro Transportation was first made aware of the identity of the individual who accepted service on behalf of Defendant Twin County Transportation in Plaintiff's October 9, 2006 supplemental submission to the Court, Defendant had over a month before Magistrate Judge Cecchi's Report and Recommendation was filed, in which to conduct any such "additional investigation."

Finally, even if the Court were to consider the fruits of Defendant Pro Transportation's belated investigation, the Court still finds that Defendant Pro Transportation's removal was procedurally defective, as Defendant Twin County Transportation, which is listed as an active corporation according to the New York Department of State, did not join in the notice of removal, or consent to same. See Cherette Smith Affidavit, ¶ 3.